10-1978

North Carolina v. Butler

Lewis F. Powell Jr.

Drum/w/v to Grant

N.C. S/Ct has added a further requirement to Miranda - i.e. that waiver of counsel must be explicit, either verbally or in writing. But in other states & 10 Circuits, Miranda ~~many~~ waiver may be inferred - as here. ~~He~~ Resp confused but refused to sign statement. He had been given M/warnings.

Preliminary Memo

November 3, 1978 Conference
List 1, Sheet 3

No. 78-354

NORTH CAROLINA

v.

BUTLER (won new trial on appeal)

Timely

Cert to North Carolina Supreme Court (Huskins for the entire court)
State/Criminal

1. SUMMARY: The issue in this case is whether an express oral or written waiver of the right to counsel must occur before any incriminating statements, made after proper Miranda warnings have been given and are understood, may be admitted as evidence against the defendant.

Discuss with a view to granting. N. Car. Sup. Ct's reqt of express written or oral waiver of right to counsel, despite petr's indication of his understanding of Miranda warning and his desire to talk, is inconsistent with conclusion of numerous other lower courts.

Bruce

2. FACTS: Resp was indicted by North Carolina for felonious assault, kidnapping, and armed robbery. He was apprehended in New York by an FBI agent and immediately given Miranda warnings. He was then taken to a police station where the warnings were repeated. He was asked several times if he understood his rights and replied that he did. When given a standard waiver of rights form, however, resp stated that he "didn't want to sign this form" and that he "didn't want to sign anything." Opinion of N.C. Sup. Ct., Petn. at A-4. The police nevertheless indicated that they wanted him to talk to them, and resp replied "I will talk to you but I am not signing any form." Id. Resp then gave a statement that implicated him in the crimes for which he was charged and was used at trial, over objection, to convict him. He was sentenced to two concurrent life sentences and a concurrent term of 5 years.

On direct appeal to the North Carolina Supreme Court (bypassing the intermediate court of appeals), resp won a reversal of the convictions on the ground that the statements should have been suppressed. The court interpreted Miranda v. Arizona, 384 U.S. 436 (1966), as requiring an express waiver of the right to have counsel present during interrogation before any incriminating statements elicited during questioning of the defendant may be used against him at trial. The court relied specifically on the following passages from Miranda:

> "An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. . . . [Emphasis added.]"

Id. at 470.

> "An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained. . . ."

Id. at 475.

> "After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."

Id. at 479. It concluded that since resp had not signed the waiver form and had not expressly stated that he was waiving his right to counsel, he had not voluntarily waived that right. The court did find a valid waiver of resp's Fifth Amendment right to remain silent, but the Sixth Amendment violation alone required

suppression of the statements, reversal of the convictions, [1] and a new trial.

3. ARGUMENT: First, North Carolina argues that the result reached by North Carolina goes beyond the requirements of Miranda. It relies on the following passages from Miranda in contending that a tacit waiver of the right to counsel should be sufficient:

> "If the individual indicates in any manner at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present."

384 U.S. at 473-74 (emphasis added).

> "Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence."

Id. at 478.

Brewer v. Williams, 430 U.S. 387 (1977), did not require the result either. In Brewer, the defendant actually asserted his right to counsel, and there was no evidence that he later changed his mind and waived the right. In contrast, here there was no assertion of the right in the beginning and thus no need for an express waiver.

1/ The court thought there was ample evidence, even without the statements, to convict resp, but could not "say beyond a reasonable doubt that the inculpatory statement did not materially affect the result of the trial to defendant's prejudice or that it was harmless error." App. at 7-8.

Second, North Carolina has gathered a formidable quantity of contrary authority. All of the following cases have held that a tacit waiver is sufficient: United States v. Speaks, 453 F.2d 966 (CA 1 1971); United States v. Boston, 508 F.2d 1171 (CA 2 1974); United States v. Studkey, 441 F.2d 1104 (CA 3), cert. denied, 404 U.S. 841 (1971); United States v. Thompson, 417 F.2d 196 (CA 4), cert. denied, 396 U.S. 1047 (1970); United States v. Cavallino, 498 F.2d 1200 (CA 5 1972); United States v. Ganter, 436 F.2d 364 (CA 7 1970); United States v. Marchildon, 519 F.2d 337 (CA 8 1975); United States v. Moreno-Lopez, 466 F.2d 1205 (CA 9 1972); United States v. Cooper, 499 F.2d 1060 (CA DC 1974). In addition, North Carolina has collected a list of 19 different state jurisdictions (petn. at 16-18) that have also approved tacit waivers.

The response does nothing more than reiterate the reasoning of the North Carolina Supreme Court and cites no other jurisdiction that has adopted the same rule.

4. DISCUSSION: North Carolina is correct that all of the federal cases it cited (which include 10 of the 11 circuits) have held that a tacit waiver is sufficient. I did not read any of the 28 state cases cited but suspect that they, too, approve tacit waivers. It looks as if the North Carolina Supreme Court has taken a position on waiver that is inconsistent with every other jurisdiction that has considered the issue. For that reason, this case should receive serious consideration for review. Because the issue is rather narrow, however, full-dress review may not be necessary.

A response has been filed.

10/23/78	Spaeth	Opinion in Petition

ME

November 3, 1978

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 78-354

NORTH CAROLINA

vs.

BUTLER

Also motion of respondent for leave to proceed ifp.

P.S. - N.C. w/ alone & w/ motion

Grant & Reverse

P.S. will write P.C.

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.		✓	&	Reverse				or	Deny				
Brennan, J.			✓										
Stewart, J.		✓	&	Reverse				↓					
White, J.		✓	&	Reverse									
Marshall, J.			✓										
Blackmun, J.		✓	&	Reverse									
Powell, J.		✓			"								
Rehnquist, J.		✓			"								
Stevens, J.			✓										
.....													

Court ..... Voted on ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 78-354

Submitted ....., 19... *Announced* ....., 19...

NORTH CAROLINA

VS.

BUTLER

Relisted for Mr. Justice Stewart. Also motion of resp for leave to proceed ifp.

Give Jonied
Stewart

Relisted for
P.S.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 20 NOV 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

STATE OF NORTH CAROLINA *v.* WILLIE THOMAS BUTLER, AKA TOP CAT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

No. 78-354. Decided November —, 1978

PER CURIAM.

The respondent was arrested by an FBI agent in New York on a fugitive warrant from North Carolina. The agent testified that immediately after the arrest he fully advised the respondent of the rights delineated in *Miranda* v. *Arizona*, 384 U. S. 436. The respondent was then taken to the New Rochelle FBI office, where he was again informed of his *Miranda* rights. Given the Bureau's "Advice of Rights" form, the respondent then read it himself. When asked if he understood his rights, he replied that he did. The respondent refused to sign the waiver at the bottom of the form. He was told that he need neither speak nor sign the form, but that the agents would like him to talk to them. The respondent replied, "I will talk to you but I am not signing any form." He then made inculpatory statements. The agent testified that the respondent said nothing when advised of his right to an attorney.

At trial the respondent objected to the admission of his statements. The trial court then heard testimony from the arresting agent outside the presence of the jury. The court found

> "the statement made by the defendant, William Thomas Butler, to Agent David C. Martinez, was made freely and voluntarily to said agent after having been advised of his rights as required by the *Miranda* ruling, including his right to an attorney being present at the time of the inquiry and that the defendant, Butler, understood his

> rights; [and] that he effectively waived his rights, including the right to have an attorney present during the questioning by his indication that he was willing to answer questions, having read the rights form together with the Waiver of Rights . . . ."

The respondent's statements were admitted into evidence. He was convicted of kidnaping, armed robbery, and felonious assault.

The North Carolina Supreme Court reversed the convictions. It found that the statements had been admitted in violation of the requirements of the *Miranda* case, noting that the respondent had refused to waive in writing his right to have counsel present and that there had not been a *specific* oral waiver, knowingly made. As it had in at least two earlier cases, the state court read the *Miranda* opinion as

> "provid[ing] in plain language that waiver of the right to counsel during interrogation will not be recognized unless such waiver is 'specifically made' after the *Miranda* warnings have been given." 295 N. C. 250, 255, 244 S. E. 2d 410, 413.

See *State* v. *Blackmon*, 280 N. C. 42, 49–50, 185 S. E. 2d 123, 127–128 (1971); *State* v. *Thacker*, 281 N. C. 447, 453–454, 189 S. E. 2d 145, 149–150 (1972).[1]

The North Carolina Supreme Court erred in its reading of the *Miranda* opinion. There this Court said that

> "If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege

[1] But see *State* v. *Siler*, 292 N. C. 543, 550, 234 S. E. 2d 733, 738 (1977). In that case the North Carolina Supreme Court adhered to the interpretation of *Miranda* it first expressed in *Blackmon*, but acknowledged that it might find waiver without an express written or oral statement if the defendant's subsequent comments revealed that his earlier silence had been meant as a waiver. Although *Siler* was cited by the state court in the present case, that portion of the *Siler* opinion was not discussed.

> against self-incrimination and his right to retained or appointed counsel." 384 U. S., at 475.

The Court's opinion went on to say that

> "An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained." *Ibid.*

The Court thus held that an express statement can constitute a waiver, and that silence alone after warnings cannot do so. But the Court did not hold that such an express statement is always indispensable before a finding of waiver can be made.

An express written or oral statement of waiver of the right to remain silent or the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but rather whether the defendant made an "intentional relinquishment or abandonment of a known right or privilege." *Johnson* v. *Zerbst*, 304 U. S. 458, 464. As was unequivocally said in *Miranda*, mere silence is not enough. That does not mean that silence, coupled with an understanding of his rights and a course of conduct indicating waiver, may never support a conclusion that a defendant has waived his rights. The courts must apply a presumption against waiver; the prosecution's burden is great; but in at least some cases waiver can be implicit in the actions and words of the person interrogated.[2]

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[2] We do not today even remotely question the holding in *Carnley* v. *Cochran*, 369 U. S. 506, which was specifically approved in the *Miranda* opinion, 384 U. S., at 475. In that case, decided before *Gideon* v. *Wainwright*, 372 U. S. 335, the Court held that the defendant had a constitutional right to counsel. The Florida Supreme Court had presumed that his right had been waived because there was no evidence in the record that he had requested counsel. The Court refused to allow a presumption of waiver from a silent record. It said "the record must

The vast majority of the courts that have considered this question have reached the same conclusion. Ten of the 11 United States Courts of Appeals [3] and the courts of at least 16 States [4] have held that an explicit statement of waiver is not invariably necessary to support a finding that the defendant

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show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer." 369 U. S., at 516. This statement is consistent with our decision today, which is merely that a court *may* find an intelligent and understanding rejection of counsel in situations where the defendant did not *expressly* state as much.

[3] *United States* v. *Speaks*, 453 F. 2d 966 (CA1 1971); *United States* v. *Boston*, 508 F. 2d 1171 (CA2 1974); *United States* v. *Studley*, 441 F. 2d 1104 (CA3 1971); *Blackmon* v. *Blackledge*, 541 F. 2d 1070 (CA4 1976); *United States* v. *Hayes*, 385 F. 2d 375 (CA4 1967); *United States* v. *Cavallino*, 498 F. 2d 1200 (CA5 1972); *United States* v. *Montos*, 421 F. 2d 215 (CA5 1970); *United States* v. *Gunter*, 436 F. 2d 364 (CA7 1970); *United States* v. *Marchildon*, 519 F. 2d 337 (CA8 1975); *Hughes* v. *Swenson*, 452 F. 2d 866 (CA8 1971); *United States* v. *Moreno-Lopez*, 466 F. 2d 1205 (CA9 1972); *United States* v. *Hilliker*, 436 F. 2d 101 (CA9 1070); *Bond* v. *United States*, 397 F. 2d 162 (CA10 1969), but see *United States* v. *Sullins*, 385 F. 2d 375 (CA10 1967); *United States* v. *Cooper*, — U. S. App. D. C. —, 499 F. 2d 1060 (1974).

In *Blackmon* v. *Blackledge*, *supra*, the Court of Appeals for the Fourth Circuit specifically rejected the North Carolina Supreme Court's inflexible view that only express waivers of *Miranda* rights can be valid.

[4] *Sullivan* v. *State*, 351 So. 2d 659, cert. denied, 351 So. 2d 665 (Ala. Cr. App. 1977); *State* v. *Pineda*, 110 Ariz. 342, 519 P. 2d 41 (1974); *State ex rel. Berger* v. *Superior Court*, 109 Ariz. 506, 513 P. 2d 935 (1973); *People* v. *Johnson*, 70 Cal. 2d 541, 450 P. 2d 865 (1969) (reversed on other grounds); *People* v. *Weaver*, 179 Colo. 331, 500 P. 2d 980 (1972); *Reed* v. *People*, 171 Colo. 421, 467 P. 2d 809 (1970); *State* v. *Craig*, 237 So. 2d 737 (Fla. 1970); *Peek* v. *State*, 239 Ga. 422, 238 S. E. 2d 12 (1977); *People* v. *Brooks*, 51 Ill. 2d 156, 281 N. E. 2d 326 (1972); *State* v. *Hazelton*, 330 A. 2d 919 (Me. 1975); *Miller* v. *State*, 251 Md. 362, 247 A. 2d 530 (1968); *Commonwealth* v. *Murray*, 359 Mass. 541, 269 N. E. 2d 641 (1971); *State* v. *Alewine*, 474 S. W. 2d 848 (Mo. 1972); *State* v. *Burnside*, 473 S. W. 2d 697 (Mo. 1971); *Shirley* v. *State*, 520 P. 2d 701 (Okla. Crim. App. 1974); *State* v. *Davidson*, 252 Ore. 617, 451 P. 2d 481 (1969); *Commonwealth* v. *Garnett*, 458 Pa. 4, 328 A. 2d 335 (1974); *Bowling* v. *State*, 458 S. W. 2d 639 (Tenn. Crim. App. 1970); *State* v. *Young*, 89 Wash. 2d 613, 574 P. 2d 1171 (1978).

waived the right to remain silent or the right to counsel. By creating an inflexible *per se* rule that no implicit waiver can ever suffice, the North Carolina Supreme Court has gone beyond the requirements of federal organic law. A state court can neither add to nor subtract from the mandates of the United States Constitution. *Oregon* v. *Hass*, 420 U. S. 714.[5]

Accordingly, the petition for a writ of certiorari is granted, the judgment is vacated, and the case is remanded to the North Carolina Supreme Court for further proceedings not inconsistent with this opinion.

[5] By the same token this Court must accept whatever construction of a state constitution is placed upon it by the highest court of the State.

Eric ✓
Bruce ✓
Dave ✓
Paul

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 20, 1978

Re: No. 78-354 - North Carolina v. Butler

Dear Potter:

Please join me in your per curiam.

Sincerely,

HAB.

Mr. Justice Stewart

cc: The Conference

Eric ✓
Byron ✓
Darry ✓
Paul

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 20, 1978

Re: No. 78-354 North Carolina v. Butler

Dear Potter:

Please join me.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

November 20, 1978

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Sincerely,

Mr. Justice Stewart

lfp/ss

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

P.3

Circulated: _____

2nd DRAFT

Recirculated: 21 NOV 1978

SUPREME COURT OF THE UNITED STATES

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See *State* v. *Blackmon*, 280 N. C. 42, 49–50, 185 S. E. 2d 123, 127–128 (1971); *State* v. *Thacker*, 281 N. C. 447, 453–454, 189 S. E. 2d 145, 149–150 (1972).[1]

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Accordingly, the petition for a writ of certiorari is granted, the judgment is vacated, and the case is remanded to the North Carolina Supreme Court for further proceedings not inconsistent with this opinion.

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To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 21 NOV 1978

Recirculated: _____

1st Draft

Supreme Court of the United States

STATE OF NORTH CAROLINA v. WILLIE THOMAS BUTLER, AKA TOP CAT

No. 78-354, Decided November __, 1978

MR. JUSTICE BRENNAN, dissenting.

Miranda v. Arizona, 384 U.S. 436, 470 (1966), held that "[n]o effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given." (emphasis added). In so holding, the Court affirmed the decision in Carnley v. Cochran, 369 U.S. 506, 516 (1962), which held that "[p]resuming waiver from a silent record is impermissible." In that case, the Court stated that in the absence of an allegation of an "affirmative waiver .....there is no disputed fact question requiring a hearing." Id.

There is no allegation of an affirmative waiver in this case. As the Court concedes, the respondent here refused to sign the waiver form, and "said nothing when advised of his right to an attorney." There was, therefore, no "disputed fact question requiring a hearing," and the district court was in error in holding one. In the absence of an express written or oral waiver, the Supreme Court of North Carolina correctly granted a new trial. I would affirm the decision of the North Carolina Supreme Court.

Eric
Bruce
Dennis
Paul

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 21, 1978

Re: 78-354 - State of North Carolina v. Butler

Dear Potter:

My minutes show ~~five~~ six votes to grant and reverse outright and I so vote.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 22 NOV 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

STATE OF NORTH CAROLINA *v.* WILLIE THOMAS BUTLER, AKA TOP CAT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

No. 78-354. Decided November —, 1978

MR. JUSTICE BRENNAN, dissenting.

Miranda v. *Arizona*, 384 U. S. 436, 470 (1966), held that "[n]o effective waiver of the right to counsel during interrogation can be recognized unless *specifically* made after the warnings we here delineate have been given." (Emphasis added). In so holding, the Court affirmed the decision in *Carnley* v. *Cochran*, 369 U. S. 506, 516 (1962), which held that "[p]resuming waiver from a silent record is impermissible." In that case, the Court stated that in the absence of an allegation of an "affirmative waiver . . . there is no disputed fact question requiring a hearing." *Ibid.*

There is no allegation of an affirmative waiver in this case. As the Court concedes, the respondent here refused to sign the waiver form, and "said nothing when advised of his right to an attorney." There was, therefore, no "disputed fact question requiring a hearing," and the District Court was in error in holding one. In the absence of an express written or oral waiver, the Supreme Court of North Carolina correctly granted a new trial. I would affirm the decision of the North Carolina Supreme Court.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 30, 1978

Re: 78-354 - North Carolina v. Butler

Dear Potter:

Although I originally voted to deny, I would prefer argument on the merits to a summary disposition and therefore now join Byron in voting to grant.

Respectfully,

JPS

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 30, 1978

Re: No. 78-354 - North Carolina v. Butler

Dear Potter,

I would now vote to grant and hear argument in this case before attempting to settle the differences with respect to the issue involved.

Sincerely yours,

Mr. Justice Stewart
Copies to the Conference

BB 11/30/78

SUPPLEMENTAL MEMORANDUM

To: Mr. Justice Powell

Re: Scorecard in North Carolina v. Butler, No. 78-354

Justice Stewart has circulated a per curiam opinion granting the writ, vacating the judgment of the lower court, and remanding the case. You have joined, along with Justices Blackmun and Rehnquist, and the Chief Justice.

Justice White, who voted at conference to grant and reverse summarily, has changed his mind. He would now vote to grant the petition and hear argument in the case. Justice Stevens takes the same position.

Justice Brennan has circulated a dissent from Justice Stewart's per curiam opinion, indicating that he would affirm the lower court.

Justice Marshall has not been heard from since his original vote in conference to deny the petition.

November 22, 1978

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 78-354

NORTH CAROLINA

vs.

BUTLER

Relisted for Mr. Justice Stewart.

I've Joined Potter

Relisted for T. M + John

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													

December 1, 1978

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 78-354

NORTH CAROLINA

vs.

BUTLER

Relisted for Mr. Justice Marshall. Also motion of resp for leave to proceed ifp.

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.			✓	✓	G	+	R						
Brennan, J.		✓											
Stewart, J.		✓	+	R									
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓	+	R									
Powell, J.		✓	+	R									
Rehnquist, J.		✓	+	R									
Stevens, J.		✓	●										
.....													

I've joined P.S. op.

Grant + Reverse

But relisted for T. M.

December 8, 1978

Court .....
Argued ....., *19*...
Submitted ....., *19*...

Voted on....., *19*...
Assigned ....., *19*...
Announced ....., *19*...

No. 78-354

NORTH CAROLINA

vs.

BUTLER

Relisted for Mr. Justice Marshall. Also motion of resp for leave to proceed ifp.

Grant

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.		✓	+	R									
Brennan, J.		✓											
Stewart, J.		✓	+	R									
White, J.		✓											
Marshall, J.		✓											
Blackmun, J.		✓	+	R									
Powell, J.		✓	¢	R									
Rehnquist, J.		✓	+	R									
Stevens, J.		✓											

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 10, 1979

Re: No. 78-354 - State of North Carolina v. Willie Thomas Butler

Dear Potter:

I shall await the dissent.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 10, 1979

Re: No. 78-354 - North Carolina v. Butler

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 11, 1979

Re: No. 78-354 - North Carolina v. Butler

Dear Potter:

Please join me in your recirculation of April 11.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 12, 1979

RE: No. 78-354 - State of North Carolina v. Willie Thomas Butler

Dear Bill:

Please join me in your dissent.

Respectfully,

JPS

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 12, 1979

Re: No. 78-354 - State of North Carolina v.
Willie Thomas Butler

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 12, 1979

Re: 78-354 - State of North Carolina
v. Butler

Dear Potter,

I agree.

Sincerely yours,

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 19, 1979

Re: 78-354 - North Carolina v. Butler

Dear Potter:

I join.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
		4/2/79						
Join PS 4/14/79	dissent typed Draft 4/12/79	1st draft 4-10-79	Join PS 4/12/79	concur dissent 4/10/79	Join PS 4/11/79	out	Join PS 4/10/79	Join w JB 4/12/79
	1st draft 4/13/79	2nd draft 4/11/79		Join w JB 4/14/79	typed Draft concurring opinion 4/20/79 1st draft 4/20/79			

78-354 North Carolina v. Butler